

GAO

Report to the Honorable Jeff Sessions,
U.S. Senate

December 2001

CONTRACT MANAGEMENT

Update on DOD's Purchase of Black Berets

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United States General Accounting Office
Washington, DC 20548

December 11, 2001

The Honorable Jeff Sessions
United States Senate

Dear Senator Sessions:

On May 2, 2001, we testified on Defense Logistics Agency (DLA) efforts to purchase black berets for Army forces. These purchases responded to the Army's announcement, in October 2000, that Army personnel would begin wearing berets 8 months later. In an effort to respond to the Army's requirement in the limited time provided, DLA contracted for production of nearly 5 million berets at a cost of about \$30 million. In the process, DLA shortcut normal contracting procedures and waived restrictions, contained in the so-called "Berry Amendment," that limit Department of Defense (DOD) purchases of certain items, including clothing, to those produced in the United States or its possessions. Despite these efforts, DLA was unable to meet the Army's deadline, and it terminated three contracts because the contractors did not meet delivery requirements.

In response to your request, we followed up on our earlier work in order to assess the current status of the black beret procurement as well as the status of DOD's efforts to ensure proper waivers of the Berry Amendment.

Results in Brief

To date, DOD has received about 2.1 million berets less than 1 million of which were distributed to Army personnel. DOD still expects another 1.6 million berets to be delivered by September 2002.

DOD has also taken steps to ensure that proposed waivers of the Berry Amendment are considered at an appropriate management level. DOD no longer allows the Under Secretary of Defense (Acquisition, Technology and Logistics) or the service secretaries to delegate their authority to approve Berry Amendment waivers. Requests for waivers must also be supported by analyses of why alternatives that would not require a waiver were unacceptable. Since these requirements were set, the Under Secretary has approved six waivers, all of which originated at the Defense Logistics Agency.

Because DOD is taking actions to ensure proper waivers of the Berry Amendment, we are not making recommendations.

Background

On October 17, 2000, the Army Chief of Staff announced that all Active, National Guard, and Reserve personnel would be issued black berets as part of their standard headgear. The chief of staff also announced that Army personnel would begin wearing the new berets on June 14, 2001—the Army's first birthday in the new millennium.

This decision placed substantial demands on DOD's procurement system. In fact, at the time of the announcement, DLA had only one domestic supplier under contract to produce a maximum of 138,052 berets. To obtain a large number of berets by the deadline, DLA contracted with seven suppliers for 4.8 million berets valued at \$29.6 million. DLA identified only one domestic source for black berets and awarded it a \$7.6 million contract for 1.2 million black berets. The remaining berets were to be produced by foreign sources, including more than 600,000 berets in China.¹

We testified that due to the extremely short time frame for delivery of the berets to the Army, there was very little time to plan for the purchase and little room to respond to production problems. In their eagerness to serve the Army, DLA contracting officials chose to shortcut normal contracting procedures. For example, DLA awarded the first set of contracts without competition. According to contract documents, the contract actions were not competed because of an "unusual and compelling urgency," one of the circumstances permitting other than full and open competition. The basis for the unusual and compelling urgency was:

"The Army will be seriously injured if this action is not approved. The Army Chief of Staff has approved a uniform change for the entire Army and this action is imperative in order for this Command [DLA] to support the service by the introduction date."

We also testified that, in awarding contracts for foreign-produced berets, DLA officials had approved waivers of the Berry Amendment. The Berry Amendment can be waived² if the Secretary of the Department concerned or designee determines that items of satisfactory quality and sufficient quantity cannot be acquired as and when needed from domestic suppliers at U.S. market prices. To meet the Army's time frame, DLA determined that domestic sources were unavailable to produce all of the berets required and that contracting with foreign sources was necessary. The

¹ Another 750,000 berets were to be made in South Africa with leather from China.

² Waivers are known as "domestic non-availability determinations."

Deputy Commander of DLA's Defense Supply Center-Philadelphia approved the first two of the three waivers in November and December 2000. As the first waiver was being processed, questions were raised by DLA Headquarters about whether waivers could be approved at this level. In November 2000, DLA's Senior Procurement Executive requested and later received a delegation of authority to waive the Berry Amendment from the Under Secretary of Defense (Acquisition, Technology and Logistics). Using this delegation, DLA's Senior Procurement Executive approved the earlier waivers as well as an additional waiver.

In April 2001, the Under Secretary canceled this delegation of authority. This action was taken to ensure that any request for a waiver to the Berry Amendment "receives attention at an appropriate level within the Department of Defense." Before and during the hearing at which we testified, questions were raised about whether waiving the amendment and awarding a contract for Chinese production of berets were appropriate.

Current Status of Black Beret Purchase

As of mid-October 2001, about 2.1 million berets had been delivered to DLA. Less than 1 million of these berets have been distributed to Army, National Guard, and Reserve personnel. Two actions reduced the availability of berets.

- First, DLA terminated three contracts because of the contractors' failure to deliver berets on time.
- Second, on May 1, 2001, the Deputy Secretary of Defense, noting the Army Chief of Staff's decision that U.S. troops shall not wear berets made in China or made with Chinese content, directed that appropriate action be taken to dispose of those black berets. This action affected about 925,000 of the berets, valued at \$6.5 million. DLA has not yet made a decision on how to dispose of these berets.

As of mid-October, 2001, 1.6 million berets were still due under existing contracts. DLA expects to have all of these on hand by September 2002. DLA is in the process of contracting for additional berets so that it can distribute two berets to all personnel and have an adequate stock of berets. It expects to complete this distribution effort by October 2003. (The status of DLA's contracts for berets is summarized in table 1.)

Table 1: Status of Black Beret Contracts

Supplier	Firm	Place of Manufacturer	Location		Quantity due to be delivered	Quantity canceled	Current dollar value (in thousands)
			Quantity of berets purchased	Quantity delivered			
Bancroft Cap Co.	U.S.	U.S. (with Pakistani and South African content)	1,200,000	398,398	801,602		\$8,002
Dorothea Knitting	Canada	Canada	1,083,504	530,160	553,344		8,334
Denmark Military Equipment	U.S.	Romania	480,816	90,292	40,256	350,268	751
Bernard Cap Co.	U.S.	South Africa (with Chinese content)	750,000	198,636	108,820	442,544	1,956
C.W. Headdress	United Kingdom	Sri Lanka	240,000	240,000	0		1,186
Kangol LTD.	United Kingdom	China	617,936	617,936	0		4,520
Northwest Woolen Mills	U.S.	India	392,064	56,736	99,920	235,408	993

Actions Taken to Ensure Proper Waivers of the Berry Amendment

On May 1, 2001, the Deputy Secretary of Defense issued a memorandum underscoring the requirements of the Berry Amendment and directing that the authority for waiving the amendment could not be delegated below the Under Secretary of Defense (Acquisition, Technology and Logistics) or the Secretaries of the Army, Navy, and the Air Force. The memorandum rescinded all existing delegations of authority. And it stated that waivers could not be granted without an analysis of why alternatives that would not require a waiver were unacceptable. The Army, Navy, and Air Force, as well as DLA, followed up on this memo by revising their own acquisition regulations to incorporate the new requirements.

Since the memorandum was issued, the Under Secretary of Defense has approved six waivers of the Berry Amendment.³ All six originated from DLA's Defense Supply Center in Philadelphia. None of these purchases

³ In addition, the Secretary of the Army approved a waiver for baled cotton linters used in the manufacture of nitrocellulose. The waiver applies to the Modular Artillery Charge System, 120mm Tank Training Ammunition, and the 2.75 Inch Hydra 70 Rocket.

were new. In three cases the increased attention to the Berry Amendment led some suppliers to identify situations where waivers were necessary and in three other cases existing waivers were due to expire. The six waivers cover purchases of (1) black berets, from the domestic manufacturer, that included wool and leather from foreign sources, (2) goat hair canvas used in producing military coats and headgear, (3) rayon yarn used for military clothing and textile items such as sleeping bags, insignias, and labels, (4) medical/surgical related purchases, (5) cotton yarn of a special grade used in certain military gloves and helmet liners, and (6) cambrelle—a textile material used in a variety of military footwear.

- In May 2001, the domestic manufacturer of berets notified DLA that foreign wool and leather had been used in berets delivered to DLA and those in production at that time. Based on the Army's requirement for immediate delivery of berets, the Under Secretary approved a waiver for these berets. DOD officials stated that, in the future, berets from this company would be made entirely of U.S.-produced material.
- In July 2001, the Under Secretary approved a waiver for the use of goat hair canvas. Military specifications require that goat hair canvas be used to make certain coats and headgear. A company that produces these items had been notified by its supplier that the goat hair canvas it provided was not completely of domestic content. DLA researched the availability of domestically produced goat hair canvas and found that goat hair canvas had not been domestically produced since 1996. The waiver, therefore, covered current and future contracts requiring goat hair canvas. However, the Under Secretary's waiver also required DLA to work with the services to assess whether any other comparable and domestically available material could be used. If no alternative is acceptable, the waiver requires the service to provide a written explanation. In addition, if goat hair canvas proves to be the only acceptable material, DLA is required by the waiver to continue its search for a domestic producer that can comply with the Berry Amendment.
- Following a May 2001 conference with its suppliers, DLA learned from a contractor that the specialty cotton yarn ("90/1 cc or higher") that is used in military gloves had been obtained from a foreign source between 1994 and March 2001. DLA's search for suppliers identified a contractor who expected to begin domestic production of the specialty cotton yarn in October 2001. In September 2001, the Under Secretary determined that it was essential to allow procurement of clothing and textile items that contain the specialty cotton yarn that had been obtained during the 1994 to March 2001 time frame, and approved a waiver covering only that period.

- Rayon yarn is used in a variety of clothing and other textile items. In 1987, DOD determined that a certain type of rayon yarn ("yarn, 50 denier rayon") was not made domestically in sufficient quantity and with satisfactory quality. Since 1995, DLA had not been able to acquire any items containing domestically produced rayon yarn of acceptable quality and several waivers of Berry Amendment requirements were approved. In July 2001, the Under Secretary approved a waiver for current and future purchases of clothing and textile items containing rayon yarn. However, the Under Secretary directed that a review be conducted of any specification requiring use of rayon yarn for the purpose of determining if a domestically available material would suffice. If rayon yarn is found to be the only acceptable material, the Under Secretary directed that DLA continue to search for a domestic producer of rayon yarn.
- The military healthcare system relies on prime vendors to supply commercial medical and surgical products for its treatment facilities. These prime vendors normally distribute medical and surgical supplies to civilian hospitals and treatment facilities in a given geographical area. DLA has determined that about 10 percent of the items purchased from prime vendors contain textile or fibers that are covered by the Berry Amendment. The industry does not track the origin of items or their content. Because an existing waiver for medical and surgical items was due to expire, DLA and the services reviewed the potential impact of eliminating Berry Amendment covered items from the prime vendor program and concluded that such an action would disrupt the delivery of healthcare and degrade military readiness. In response, in June 2001, the Under Secretary approved an interim waiver for medical-surgical purchases under the prime vendor program. The Under Secretary directed, however, that DLA conduct a complete review of the origin of Berry Amendment covered items and report to the Under Secretary on the results of the review. The Under Secretary also directed that for any items where a domestic equivalent is identified, foreign items should be deleted from the database of items available under the prime vendor program.
- Cambrelle is a textile material that is bonded to other materials to make a lining component for a wide variety of military footwear. In 1999, DLA learned that cambrelle was no longer available domestically in satisfactory quality. DLA efforts to identify a domestic supplier did not result in any positive responses from the textile industry. The existing waiver was due to expire in October 2001. In September 2001, the Under Secretary approved a waiver for cambrelle that covers contracts awarded in fiscal year 1999 and thereafter. However, the Under Secretary's waiver also required DLA to complete its review with the services to assess whether any other comparable and domestically available material could be used. If no other alternative is acceptable, the waiver requires the services to

provide a written explanation. In addition, if cambrelle is the only acceptable material, DLA is required to continue its search for a domestic supplier who can comply with the Berry Amendment. Further, the Under Secretary required DLA to provide a briefing on the results of its work within the next 12 months.

To support continued attention to Berry Amendment requirements, DLA also sent additional guidance to its buying activities in September 2001. The guidance identified actions that contracting personnel could take to heighten supplier awareness of the requirements of the Berry Amendment and thus facilitate compliance with the Amendment. Among the actions suggested were the following:

- highlighting Berry Amendment restrictions in pre-proposal conferences;
- including in solicitations the full text of the regulatory clause stating the Berry Amendment requirements, rather than simply referencing the clause;
- making domestic source requirements a mandatory discussion item when conducting negotiated procurements; and
- emphasizing the ability to implement domestic source restrictions when contractor purchasing systems are reviewed.

Agency Comments and Our Evaluation

In its written response to a draft of this report, DOD questioned whether the reference to shortcuts in normal contracting procedures was adequately explained. As a result, we expanded the background section to explain our use of this phrase in greater detail. DOD also commented on the timing and source of the request for delegation authority to waive the Berry Amendment. We added additional detail in the background section to clarify this issue. (DOD comments appear in app. I.)

To assess the purchase of black berets, we reviewed documentation pertaining to this procurement obtained from the Defense Supply Center-Philadelphia, DLA headquarters, and the Office of the Secretary of Defense. We also discussed the procurement with officials from the Army, DLA (Philadelphia and headquarters), and the Office of the Secretary of Defense. To assess DOD efforts to ensure proper waivers of the Berry Amendment, we reviewed policies and instructions issued by the Office of Secretary of Defense, DLA, Army, Navy, and Air Force. We also reviewed waivers that had been approved by the Under Secretary of Defense. Our work was performed in accordance with generally accepted government auditing standards.

We are sending copies of this report to the Secretary of Defense; the Director of the Defense Logistics Agency; the Secretaries of the Army, the Navy, and the Air Force; the Chairman and Ranking Minority Member of the Committee on Small Business, House of Representatives; and the Director, Office of Management and Budget. We will also make copies available to others on request.

If you have questions on this report, please contact me at (202) 512-4841. Major contributors include Cristina Chaplain, Paul Greeley, and Karen Zuckerstein.

Sincerely yours,



David E. Cooper
Director
Acquisition and Sourcing Management

Appendix I: Comments From the Department of Defense

 OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

November 28, 2001

DP/FC

Mr. David E. Cooper
Director, Acquisition and Sourcing Management
U.S. General Accounting Office
441 G Street, N.W.
Washington, DC 20548

Dear Mr. Cooper:

This is the Department of Defense (DoD) response to the GAO draft report, "Update on DoD's Purchase of Black Berets and Waiver of Domestic Source Requirement", dated October 25, 2001 (GAO Code 120060/GAO-02-165R). There are two inaccurate statements contained in the report and my comments regarding each are as follows:

Regarding page one, paragraph one, line six: the words "shortcut normal contracting procedures and" should be deleted. No explanation of these words is provided in the text of the draft report. The report focuses on the decision of the Defense Logistics Agency (DLA) to waive the restrictions of the Berry Amendment. In this context, these words would be inaccurate. A procurement management review ordered by the Under Secretary of Defense (Acquisition, Technology and Logistics) in March 2001 found no basis to fault the manner in which DLA addressed the application of the Berry Amendment in this case. While our review did find a procedural error unrelated to the waiver decision (DLA had not provided the small business advisor an opportunity to review the planned purchases prior to their solicitation and contract award), a subsequent review by the small business advisor concluded that DLA's acquisition strategies were warranted, given the known capability and capacity of the relevant U.S. industrial base at the time.

Regarding page two, last paragraph, last three sentences: these sentences should be replaced by the following:

"In March 2001, the Under Secretary of Defense (Acquisition, Technology and Logistics) questioned whether waivers could have been approved at this level. Using the delegation of authority to waive the Berry Amendment provided by the Under Secretary on February 1, 2001, DLA's Senior Procurement Executive approved the earlier waivers on March 23, 2001, and granted an additional waiver on February 13, 2001."

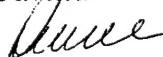
DLA's request for a delegation of authority to waive the Berry Amendment was dated November 8, 2000. This was well before the Under Secretary questioned whether waivers could



**Appendix I: Comments From the Department
of Defense**

be approved at the level of the Deputy Commander of the Defense Supply Center Philadelphia. DLA's request came as a result of earlier discussions between my staff and DLA personnel who had been unsuccessful in locating a copy of an earlier delegation of authority for the record. Our respective staff members felt it was important to have an unequivocal, documented basis for DLA's authority in these matters. This prompted DLA's request, independent of any specific procurement.

Thank you for the opportunity to review your draft report and to provide these comments.
My point of contact is Mr. Gary Blasser, 703-697-9351.



Deidre A. Lee
Director, Defense Procurement

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